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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,603	11/09/2001	Stefan Miersch		9226

7590 01/11/2005

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EXAMINER

DUONG, THANH P

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/008,603

Applicant(s)

MIERSCH ET AL.

Examiner

Tom P Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicants' remarks and amendments filed on November 3, 2004 have been carefully considered. Claim 7 has been amended. Claims 7-12 are pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 7-8 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garvin et al. (5,461,843) in view of Bremmer (4,579,654) and Chow (4,157,958). The system is being examined as an apparatus. Regarding claim 7, Garvin discloses a system (Figs.1 and 2) for generating methane gas (methane gas generated from compost) which comprises: a flexible bag (10) having an open end (52) for mounting to a bag (10) to a bag filling machine (38) for filling and compacting the bag with non-flowable material (Col. 3, lines 6-12), said bag having a horizontally extended tube length (18), a majority of said length filled with substantially non-flowable biomass material (compost) in a composition known to produce methane gas (gas generated from compost); and a remaining tubular length of the bag (inside top region of bag 10, Fig. 1) as removed from said machine being unfilled with the material, said open end (Col. 4, lines 53-55)

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tied off and filled with said gas emitted by biomass material (compost). Garvin fails to disclose an inoculant material to the biomass to induce a reaction of the biomass material and a pipe inserted through bag wall where filled with said gas for releasing methane gas from the remaining tubular length and a continuation of said pipe directing said gas to a gas collection site. Bremmer teaches suitable inoculum can be added to the manure (biomass) to facilitate the reaction and methane fermentation process (Col. 5, lines 10-24). Chow teaches the reaction vessel 10 is equipped with one or more vent lines 13 for removal of the gas and the gas is stored in a gas storage tank 15 (Col. 2, lines 21-28). Thus, it would have been obvious in view of Bremmer and Chow to one having ordinary skill in the art to modify the apparatus of Garvin with an inoculum as taught by Garvin to facilitate the fermentation process and a pipe inserted into the bag and/or vessel as taught by Chow in order to collect and store emitted gas from biomass material (compost). Regarding claim 8, Garvin shows a conduit (14 and 18) positioned inside the bag (10) at filled tubular length (space in the bottom of bag) and extended unfilled tubular length (space near top of bag) transmitting gas to the unfilled tubular length (Figs. 1 and 2). Regarding claim 11, Garvin discloses a filled bag 10 but fails to disclose a plurality of bags placed in adjacent relationship or connected in series and a gas line connected between the bags and the collection site. It would have been obvious in view of Garvin to one having ordinary skill in the art to duplicate additional bags to process additional batch of biomass material (compost). Note, the mere duplication of parts has no patentable significance unless a new and unexpected result is produced. See *In*

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re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Regarding claim 12, Garvin discloses the dominant portion of the biomass material is compost (Col. 3, lines 6-11), which includes animal waste.

2. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over applied references (Garvin '843 in view of Bremmer '654 and Chow '958) as applied to claim 8 above, and further in view of Courtland (3,981,803).

Regarding claim 9, the applied references discloses the claimed invention except a heating pad connected to a water source for flowing hot water through the pad and heating the material in the bag. Courtland '803 teaches a heat exchanger 6, connected to a hot water source, is placed in the circular central pad 3 (Col. 5, lines 1-17) and such heat exchanger provides a heating means for controlling the temperature of the fermentation process. (Col. 8, lines 15-23). Thus, it would have been obvious in view of Courtland to one having ordinary skill in the art to modify the apparatus of the applied references with a heating pad as taught by Courtland in order to heat the organic waste material or compost to generate methane gas.

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over applied references as applied to claim 9 above, and further in view of Pogoda (4,267,147). The applied references disclose the claimed invention but fail to disclose a robe is placed over the bag, water lines are positioned between the bag and robe and hot water is circulated through the lines for heating the material

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in the bag. Pogoda teaches the use of a hot bottle type comprises of elastic body envelope 51 and the heating device 50 has a water inlet port 55 and an outlet port 56 and such heating device conforms to the surface area of the structural component (Fig. 1) and facilitates even distribution of heat to the structural component. Thus, it would have been obvious in view of Pogoda to one having ordinary skill in the art to modify the apparatus of the applied references with a heating device as taught by Pogoda in order to facilitate even heat distribution between the heating device and the bag.

Response to Arguments

Applicant's arguments with respect to claims 7-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory

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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom P Duong whose telephone number is (571) 272-2794. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tom Duong
December 30, 2004

TD



Glenn Caldarola
Supervisory Patent Examiner
Technology Center 1700